

ORIGINAL
FILED

OCT 15 2007

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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Attorney for Plaintiff
Bin YU

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

C 07 5256

Bin YU

Case No.:

Plaintiff

**COMPLAINT FOR WRIT IN THE
NATURE OF MANDAMUS**

vs.

MICHAEL CHERTOFF, Secretary of the
Department of Homeland Security;
ROBERT S. MUELLER, Director of Federal
Bureau of Investigation

Defendants.

"Immigration Case"

Plaintiff Bin YU by and through his undersigned attorney, sues Defendants and states as follows:

1. This action is brought against the Defendants to compel action on the application to Adjust to Permanent Resident Status, or Form I-485, by Plaintiff Bin YU, based on his marriage to his U.S. Citizen wife, properly filed by the Plaintiff. The I-485 application remains within the jurisdiction of the Defendants, who have improperly withheld action on said application to Plaintiff's detriments.

PARTIES

2. Plaintiff Bin YU is a native and citizen of the People's Republic of China. His Form I-485, Application to Register Permanent Resident or Adjust Status was filed with the U.S.C.I.S. on May 1, 2005 (**Exhibit 1:Receipt Notice**) and is seeking to become lawful permanent resident of the United States as beneficiary of the Form I-130 petition filed by Plaintiff Bin YU's U.S. Citizen wife, Di ZHANG.

3. Defendant Michael Chertoff is the Secretary of the Department of Homeland Security (DHS), and this action is brought against him in his official capacity. He is generally charged

1 with enforcement of the Immigration and Nationality Act, and is further authorized to delegate
2 such powers and authority to subordinate employees of the DHS 8 U.S.C. 1103(a); 8 C.F.R. 2.1.
3 4. Defendant Robert S. Mueller, III, is Director of the Federal Bureau of Investigations (FBI),
4 the law enforcement agency that conducts security clearances for other U.S. government agencies,
5 such as the Department of State. As will be shown, Defendant has failed to complete the security
6 clearance on Plaintiff's case.

7 JURISDICTION

8 5. Jurisdiction in this case is proper under 28 USC §§1331 and 1361, 5 USC §701 *et seq.*,
9 and 28 USC §2201 *et seq.* Relief is requested pursuant to said statutes.

10 VENUE

11 6. Venue is proper in this court, pursuant to 28 USC §1391(e), in that this is an action
12 against officers and agencies of the United States in their official capacities, brought in the
13 District where the Plaintiff resides if no real property is involved in the action.

14 EXHAUSTION OF REMEDIES

15 7. Plaintiff has exhausted his administrative remedies.

16 CAUSE OF ACTION

17 8. Plaintiff Bin YU is a native and citizen of the People's Republic of China. His Form I-
18 485, Application to Register Permanent Resident or Adjust Status was filed with the U.S.C.I.S.
19 on May 1, 2005 (**Exhibit 1: Receipt Notice**) and is seeking to become lawful permanent resident
20 of the United States as beneficiary of the Form I-130 petition filed by Plaintiff Bin YU's U.S.
21 Citizen wife, Di ZHANG. (**Exhibit 2: I-130 Approval Notice**). Plaintiff had his AOS interview
22 in August 2005 at the San Jose Office.

23 9. According to the USCIS processing dates, the USCIS San Jose Office's time frame for
24 processing I-485 cases is six months. (**Exhibit 3: Copy of San Jose Office Processing Dates**
25 **Posted on September 15, 2007**). Plaintiff Bin YU's I-485 application has now remained pending
26 for more than two years and five months from the date of the filing.

27 10. Defendants' refusal to act in this case is, as a matter of law, arbitrary and not in accordance
28 with the law. Defendants unreasonably have delayed in and have refused to adjudicate Plaintiff

1 Bin YU's I-485 application for more than two years and five months from the date of filing,
2 thereby depriving him of the rights to the decision on his application and the peace of mind to
3 which Plaintiff is entitled.

4 11. Plaintiff has been damaged by the failure of Defendants to act in accord with their duties
5 under the law.

6 (a) Plaintiff Bin YU has been damaged by simply being deprived of the adjudication
7 of his Application to Adjust to Permanent Resident Status for more than two years
8 and five months. Plaintiff has also been unable to plan any foreign travel or pursue
9 a future course of action in the United States due to the pendency of his I-485
10 application.

11 (b) Plaintiff Bin YU has been damaged in that his employment authorization is tied to
12 his status as applicant for permanent residency, and is limited to increments not to
13 exceed one year. 8 CFR §274a.12(c)(9). Therefore, Plaintiff has been forced to
14 repeatedly apply and pay for extensions of employment authorization to the
15 continued inconvenience and harassment of Plaintiff to continually insure his work
16 eligibility.

17 (c) Plaintiff has been further damaged in that his naturalization application, for which
18 he is eligible to apply three years after he receives his Permanent Resident status,
19 has now been delayed due to the pendency of his I-485 application.

20 12. The Defendants, in violation of the Administrative Procedures Act and Mandamus Act, 5
21 USC §701 *et seq.*, are unlawfully withholding or unreasonably delaying action on Plaintiff's I-485
22 application and have failed to carry out the adjudicative functions delegated to them by law with
23 regard to Plaintiff's case.

24 PRAYER

25 13. WHEREFORE, in view of the arguments and authority noted herein, Plaintiff
26 respectfully prays that the Defendants be cited to appear herein and that, upon due consideration,
27 the Court enter an order:

28 (a) requiring Defendants to expeditiously complete Plaintiff Bin YU's FBI Security

1 Check for his I-485 application, if security check is the only reason for the delay;


2 (b) requiring Defendants to expeditiously process Plaintiff's I-485 Application to
3 conclusion;

4 (c) awarding Plaintiff reasonable attorney's fees under the Equal Access to Justice Act;
5 and

6 (d) granting such other relief at law and in equity as justice may require.

7 Dated: October 11, 2007

Respectfully submitted,

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11 Justin X. WANG, Esq.
12 Attorney for Plaintiff
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CERTIFICATION OF INTERESTED ENTITIES OR PERSON

Pursuant to Civil L.R. 3-16, the undersigned certifies that as of this date, other than the named parties, there is no such interest to report.

Dated: October 11, 2007

Respectfully submitted,


Justin X. WANG, Esq.
Attorney for Plaintiff

LIST OF ATTACHMENTS

<i>Exhibit</i>	<i>Description</i>
1	I-485 Receipt Notice
2	I-130 Approval Notice
3	Copy of San Jose Office Processing Dates Posted on 09/15/2007

Ex. 1



Receipt Number: MSC-05-236-27976		Case Type: I-485 - Application to Register Permanent Residence or Adjust Status
Received Date: May 01, 2005	Priority Date:	Applicant: A096515906 YU, BIN
Notice Date: May 26, 2005	Page 1 OF 1	ASC Code: 3

BIN YU
1536 TIMBER CREEK DRIVE
SAN JOSE CA 95131

Notice Type:	Receipt Notice
Amount Received:	\$385.00

The above application has been received. Please notify us immediately if any of the above information is incorrect. If you find it necessary to contact this office in writing, you must include a copy of this receipt notice with your inquiry.

FINGERPRINTING AND BIOMETRICS-

The next step is to have your fingerprints and biometrics taken at a BCIS Application Support Center (ASC).

Call our National Customer Service Center (NCSC) at 1-800-375-5283 to schedule your appointment. For TDD hearing impaired assistance, please call 1-800-767-1833.

It is important that you schedule your appointment. If you do not schedule or appear for your appointment, it could cause your application to be denied. If you need to reschedule your appointment, please call the NCSC at 1-800-375-5283.

WHAT TO BRING TO Your appointment -

Please bring this letter and your photo identification to your appointment. Acceptable kinds of photo identification are:

- a passport or national photo identification issued by your country,
- a driver's license,
- a military photo identification, or
- a state-issued photo identification card.

BIOMETRICS PROCESSING STAMP

ASC SITE CODE: San Jose, CA

BIOMETRICS QA REVIEW BY: JUL 14 2005

If you do not bring this letter and photo identification, we cannot process you. Please bring a copy of all receipt notices received from BCIS in relation to your current application for benefits.

TENPRINTS QA REVIEW BY: JUL 14 2005

ON JUL 14 2005

CASE STATUS -

Information about your local office processing times may be obtained by calling the NCSC at 1-800-375-5283.

If you have Internet access, you can visit the Bureau of Citizenship and Immigration Services website at www.BCIS.gov where you can find valuable information about forms, filing instructions, and immigration services and benefits.

U S BUREAU OF CITIZENSHIP AND IMMIGRATION SERVICES

P.O. Box 648005

Lee's Summit, MO 64064

National Customer Service Center: 1-800-375-5283



Ex. 2



RECEIPT NUMBER MSC-05-236-27978		CASE TYPE I130 IMMIGRANT PETITION FOR RELATIVE, FIANCE(E), OR ORPHAN
RECEIPT DATE May 26, 2005	PRIORITY DATE May 1, 2005	PETITIONER A076 292 327 ZHANG, DI
NOTICE DATE October 18, 2005	PAGE 1 of 1	BENEFICIARY A096 515 906 YU, BIN
DI ZHANG 1536 TIMBER CREEK DR SAN JOSE CA 95131		Notice Type: Approval Notice Section: Husband or wife of U.S. Citizen, 201(b) INA
<p>The above petition has been approved. The person this petition is for will be notified separately when a decision is reached on his or her pending adjustment of status application.</p> <p>The approval of this visa petition does not in itself grant any immigration status and does not guarantee that the alien beneficiary will subsequently be found to be eligible for a visa for admission to the United States, or for an extension, change, or adjustment of status.</p> <p>THIS FORM IS NOT A VISA NOR MAY IT BE USED IN PLACE OF A VISA.</p>		

Please see the additional information on the back. You will be notified separately about any other cases you filed.

NATIONAL BENEFITS CENTER

USCIS, DHS

P.O. BOX #648004

LEE'S SUMMIT MO 64064

Customer Service Telephone: (800) 375-5283



Ex. 3

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U.S. Citizenship and Immigration Services San Jose CA Processing Dates Posted September 15, 2007

Notice: U.S. Citizenship and Immigration Services (USCIS) has improved the reporting procedure for processing times of immigration benefit applications. In the past, USCIS benefit processing reports indicated the specific type of applications or petitions that were being processed and the date the cases were received. However, the date the case was received did not provide a clear indication of when USCIS expected to complete the case, nor did it provide a clear indication of USCIS' commitment to process cases within a certain cycle time. It also did not align with the processing times and cycle times the agency reports in other contexts.

This improved reporting procedure is an effort to give our customers more accurate information that better reflects current processing time and USCIS service level commitments. Effective immediately, when we are completing applications and petitions within our service level goals we will report the USCIS service level commitment. For example, when our service level goal is to process a particular kind of case within six months, and if our processing time is six months or less, we will show "6 months".

When we are not meeting our service level goal, the date posted will reflect the filing date of cases that are being completed. It should be noted that while in some instances reported processing dates may appear to have regressed due to this change, they do not reflect a lengthening of USCIS processing times, but simply the change in reporting. Our goal is to provide accurate projections and thus give customers clear expectations as to what they can expect as a processing time.

There are several important exceptions to the processing times shown below:

- Case processing will be delayed if we must ask you for more evidence or information. If we ask for missing required initial evidence, count the processing time from when we receive that missing evidence.
- The case processing timeframe will start over if a customer doesn't appear for an interview or asks that it be rescheduled.

What if I have a problem or have questions about a case?

We offer a variety of services after you file. For example, for most kinds of cases you can [check the status of your case online](#).

For more information about when and how to contact us, whether your case is outside our processing time or if there are other issues, please see our fact sheet –

[Case Services - How do I... know what kind of services are available to me after I file my application or petition?](#)

One additional point about these projections. They are the time to complete processing and mail the actual notice and/or document. If you check case status online and see that your case has been approved, and you haven't yet received your approval notice or document in the mail, we ask that you wait thirty days from the approval date before contacting us. That is because it may take that long before it is returned to us as undeliverable. You can also print the case status online answer for your records.

District Office Processing Dates for **San Jose CA** Posted September 15, 2007

Form	Form Name	Processing Timeframe:
I-131	Application for Travel Documents	3 Months
I-485	Application to Register Permanent Residence or Adjust Status	6 Months
I-600	Petition to Classify Orphan as an Immediate Relative	3 Months
I-600A	Application for Advance Processing of Orphan Petition	3 Months
I-765	Application for Employment Authorization	11 Weeks
N-400	Application for Naturalization	January 12, 2007
N-600	Application for Certification of Citizenship	March 18, 2007

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